

Remarks and Arguments

Claims 1-15 are pending; new dependent claims 11-15 have been added and claims 1, 2 and 6 amended.

Claims 2, 3, and 5 were previously found allowable if rewritten in independent form.

Claim 2 has been amended to independent form. Claim 1 has been amended to include the subject matter of claim 3. Claim 6 has been amended to more particularly point out the invention in view of the Examiner's §112 rejection. Support for the amendment of claim 6 is found in the specification on page 4, first paragraph. No new matter has been added.

Applicant addresses each of the outstanding rejections below.

Objection to the Title

Applicant has amended the title consistent with the subject matter of the various independent claims, in response to the Examiner's objection.

Section 112

Claim 6 was rejected under Section 112, second paragraph, as being indefinite in regard to the claimed channel on the front wall being arranged to extend between the hot-fill panels. Applicant has amended claim 6, consistent with the disclosure on page 4, first paragraph. Claim 6 now recites that the sidewalls each include a pair of axially spaced hot-fill panels and that one of the channels on the front wall extends into the sidewalls between the pair of hot-fill panels. This is shown in the embodiment described on page 4 and illustrated in Fig. 1. Thus, Applicant believes this objection is overcome.

Obviousness Rejections under Section 103

The claims were rejected as obvious over various combinations of nine (9) references including Finley, Wilde, Borg, Reyes, Lane, Ogg, Silvers, Lyons and Clark. Applicant will address each of these rejections in turn.

The Office has clearly failed to establish a *prima facie* case of obviousness, which requires all three of the following criteria be met:

- 1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings;
- 2) a reasonable expectation of success;
- 3) the prior art reference (or references when combined) must teach or suggest all of the claim limitations.

Furthermore:

“The teachings or suggestions to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.”

In re Vaeck, 947 F2d. 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143.

Claim 1 was rejected as obvious over Finley ‘484 in view of Wilde.

Amended claim 1 recites the combination of a plastic container and a bale handle. The container has a finish with an external thread, an external bead beneath the thread and a pair of upper and lower spaced circumferential flanges beneath the bead. The bale handle is captured on the finish beneath the lower flange.

Finley ‘484 describes a plastic container and closure having a particular sealing feature to maintain the contents of the container in sterile condition. For sealing purposes, a silicone gasket (30) is provided on a shoulder portion (24) of the container neck (14) against which an inner contact ring (45) formed on the lower rim (43) of a cap (16) seals. In addition, a sealing lip (50), extending downwardly from a top wall of the cap, forms a seal against an interior surface (11) of the container neck (14).

Finley fails to describe Applicant's claimed finish structure and bale handle. There is no bale handle or other handle described in Finley. Rather, the flanges to which the Examiner refers include an expanded diameter flange 22 which enhances structural integrity and retains the gasket 30 in place (page 4, lines 2-3), and an outwardly extending shoulder portion 24 also for retaining the gasket 30 and for structural reinforcement of the container wall. The shoulder portion 24 may include an optional circumferential groove 26 to reduce the amount of material needed in forming the container without sacrificing structural integrity (page 4, lines 4-9). Finley states that the circumferential groove 26 can be utilized to support the container by a correspondingly designed support (page 4, lines 9-11). Finley further states that the shoulder portion 24 has an upper flat shelf member 28 on which the sealing gasket 30 acts in cooperation with the closure to form a seal (page 4, lines 12-17). Thus, there is no teaching or suggestion of a handle, much less Applicant's recited handle and finish structure.

The secondary reference Wilde describes a tamper-indicating plastic closure. There is no motivation in the references for combining Wilde with Finley, nor would the combination teach Applicant's claimed bale handle and finish structure. Thus, even if combined, the references fail to teach the subject matter of claim 1.

Claim 4 was rejected as obvious over the combination of Wilde in view of Borg and Reyes.

Claim 4 recites a container and bale handle, wherein the container has a finish with an external thread and a pair of spaced external circumferential flanges. The bale handle is captured beneath the lower flange. Wilde discloses a container finish and cooperating tamper-indicating plastic closure. The finish includes an external bead-like locking ring L which cooperates with a lip 24 on a pilfer band of the tamper-resistant closure; the container finish also includes a "typical hand grip or handle H" (column 4, lines 23-25). Because the Wilde container includes a hand grip or handle H, there is no motivation or suggestion to add a further handle. Thus, there is no basis to combine Wilde with either of the secondary references.

Furthermore, while the secondary reference Borg describes a handle which engages the underside of a bottle flange 26 (column 2, lines 35-37), there are no multiple flanges described in Borg, and thus no disclosure of providing a bale handle that engages a lower one of a pair of spaced flanges. Thus, in addition to there being no motivation to combine Borg with Wilde, there is no teaching of Applicant's combined finish and handle structure in Wilde and/or Borg.

The third reference Reyes describes a microclean plastic bottle having an integral shoulder ring extending circumferentially about the bottle neck to serve as a detent for securely affixing a subsequently emplaced handle to the bottle (abstract). Again, there is no basis to combine Reyes with either of Wilde and/or Borg. The Wilde container has its own hand grip or handle H. Each of Borg and Reyes teach separate handles which engage a container neck. Where Wilde's container has a pre-existing handle H, there is no basis or motivation to combine Wilde with either or both of Borg and Reyes.

Thus, the references fail to teach or suggest the subject matter of claim 4.

Claim 6 was rejected as obvious over the combination of Lane '920 in view of Ogg '282 and Silvers '701.

Claim 6 was amended to address the Section 112 rejection. Amended claim 6 recites a hot-fill container, such as that disclosed in Fig. 1 and described on page 4, which includes sidewalls 22, 22 each having a pair of axially spaced flexible hot-fill panels 28, 30 adjacent to front wall 18. The front wall has strengthening channels 34 that extend between and into the sidewalls 22, 22. One of the channels 34a on the front wall extends into the sidewall between the pair of hot-fill panels 28, 30.

None of the references (Lane '920, Ogg '282, or Silver '701) teaches this container structure, having the claimed channel disposed between a pair of hot-fill panels. Thus, the references fail to teach the subject matter of claim 6.

Claim 7 was rejected as obvious over the three references applied against claim 6, and further in view of Finley '484. As previously described, the three references fail to teach or suggest the subject matter of claim 6 (from which claim 7 depends). For this reason alone, the rejection of claim 7 fails. Furthermore, claim 7 further recites that the finish has an external thread, an external bead beneath the thread for cooperating with tamper-indicating means on a closure secured to the finish, and a pair of spaced circumferential flanges beneath the bead. Finley, in contrast, describes a container finish and closure combination which includes a gasket 30 for enhanced sealing between the closure and container, and an inner sealing lip 50 between the closure and container, also for enhanced sealing. The flange 22 and shoulder 24 of Finley are provided to retain the sealing gasket 30 between them. This is not a teaching of Applicant's claimed bead for cooperating with tamper-indicating means and/or pair of spaced circumferential flanges beneath the bead. Thus, the four references fail to teach or suggest the subject matter of claim 7.

Claim 10 was rejected as obvious over the three references as applied to claim 6, and further in view of Lyons '936 and Clark. Again, the three references fail to teach or suggest the subject matter of claim 6, and therefore the rejection of claim 10 fails on this basis alone. Furthermore, the additional two references cannot cure the deficiencies. Lyons '936 is relied on as disclosing corner feet recessed into the base. Clark was relied on as disclosing a channel in the foot. Even assuming there was reason to combine the five references relied upon by the Examiner, which Applicant does not concede, none of the references teaches or suggests the recited sidewall and front panel structure in which the front wall has strengthening channels that extend between and into the sidewalls and one of the channels in the front wall extends into the sidewalls between a pair of hot-filled panels. Thus, claim 10 is believed to patentably distinguish over the cited references.

RECONSIDERATION

It is believed that all claims of the present application are now in condition for allowance.

Reconsideration of this application is respectfully requested. If the Examiner believes that a teleconference would expedite prosecution of the present application the Examiner is invited to call the Applicant's undersigned attorney at the Examiner's earliest convenience.

Any amendments or cancellation or submissions with respect to the claims herein is made without prejudice and is not an admission that said canceled or amended or otherwise affected subject matter is not patentable. Applicant reserves the right to pursue canceled or amended subject matter in one or more continuation, divisional or continuation-in-part applications.

To the extent that Applicant has not addressed one or more assertions of the Examiner because the foregoing response is sufficient, this is not an admission by Applicant as to the accuracy of such assertions.

Please grant any extensions of time required to enter this response and charge any fees in addition to fees submitted herewith that may be required to

enter/allow this response and any accompanying papers to our deposit account 02-3038 and credit any overpayments thereto.

IDS Filed February 28, 2005 (Request for Entry)

On February 28, 2005, Applicant filed an Information Disclosure Statement with copies of an International Search Report and the references noted therein. Although filed prior to the March 21, 2005 office action, this IDS was not acknowledged in the office action. Therefore, Applicant requests that the Examiner fully consider and acknowledge these references so that they are made of record. A copy of the previously filed IDS and references is enclosed, along with a stamped transmittal letter establishing receipt at the Patent Office on February 28, 2005.

Respectfully submitted,

Date: _____

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